72-513 FILE COPY

SEP 28 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-513

ANGELO DE ROSA,

Petitioner,

v.

THE STATE OF NEW JERSEY

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Donald Horowitz
Attorney for Petitioner
39 Hudson Street
Hackensack, New Jersey 07601

EOGRAPHING SERVICE, INC.

TABLE OF CONTENTS

	PAGE
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
POINT ONE: THE ADMISSION INTO EVIDENCE OF PORTIONS OF THE STATEMENT MADE BY PETITIONER BEFORE THE COUNTY PROSECUTOR ON MARCH 19, 1970 CONSTITUTED A VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION GRANTED BY THE FIFTH AMENDMENT IN THAT THE STATEMENT WAS GIVEN UNDER THE COERCIVE EFFECT OF THE NEW JERSEY FORFEITURE-OF-OFFICE STATUTE AS INTERPRETED BY THIS COURT IN *GARRITY V. NEW JERSEY*	6
POINT TWO: THE ADMISSION INTO EVIDENCE OF PORTIONS OF THE STATEMENT MADE BY PETITIONER BEFORE THE COUNTY PROSECUTOR ON MARCH 19, 1970 CONSTITUTED A VIOLATION OF PETITIONER'S FIFTH AMENDMENT AGAINST SELF-INCRIMINATION IN THAT PETITIONER RECEIVED NONE OF THE WARNINGS REQUIRED BY *MIRANDA V. ARIZONA* PRIOR TO HIS BEING QUESTIONED	8

POINT THREE: THE UNSUPPORTED REFERENCES BY THE COUNTY PROSECUTOR AT THE TRIAL TO LOAN-SHARKING AND OTHER ILLEGAL ACTIVITIES GOING ON AT THE JADE EAST MOTEL COULD NOT HELP BUT INFLUENCE THE JURY, THEREBY DENYING PETITIONER OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT 11

CASES CITED

	PAGE
ESCOBEDO v. ILLINOIS, 378 U.S. 478 (1964)	9
GARDNER v. BRODERICK, 392 U.S. 273 (1968)	6
GARRITY v. NEW JERSEY, 385 U.S. 493 (1966)	6
MIRANDA v. ARIZONA, 384 U.S. 436 (1966)	8,9,10
OROZCO v. TEXAS, 394 U.S. 324 (1969)	9
SPEVACK v. KLEIN, 385 U.S. 511 (1966)	6
UNIFORM SANITATION MEN ASSOCIATION, INC., v. COMMISSIONER OF SANITATION, 392 U.S. 280 (1968)	6
UNITED STATES v. BEKOWIES, 432 F. 2d 8 (9th Cir. 1970)	9

UNITED STATES CONSTITUTION

FIFTH AMENDMENT	2,5,8
FOURTEENTH AMENDMENT	2,11

UNITED STATES CODE CITED

28 U.S.C. 1257 (3)	2

NEW JERSEY STATUTES CITED

N.J.S. 2A:81–17.1	2,6
N.J.S. 2A:98–1	2

TABLE TO APPENDIX

	Page
United States Constitution – Fifth Amendment	1a
United States Constitution – Fourteenth Amendment .	1a
New Jersey Statutes: 2A:98–1	3a
2A:81–17.1.....	3a
Indictment No. S-224-70, Filed: March 24, 1970	5a
Judgment of the County Court of Bergen County, New Jersey, Law Division, Dated: May 13, 1971	8a
Opinion of the Trial Court	10a
Per Curiam Opinion of the Superior Court of New Jersey, Appellate Division, Filed: March 16, 1972 .	12a
Order Granting Motion to Dismiss Appeal, Filed: June 30, 1972	14a

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No.

ANGELO DE ROSA,

Petitioner,

v.

THE STATE OF NEW JERSEY

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Angelo DeRosa, prays that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey entered June 30, 1972, affirming his conviction under N.J.S. 2A:98–1, and that on hearing the judgment of conviction be reversed.

OPINIONS BELOW

No opinion was given by the Supreme Court of New Jersey on petitioner's appeal.

The opinion of the Appellate Division of the Superior Court of New Jersey affirming the conviction is not yet reported (see Appendix).

JURISDICTION

The decision of the Supreme Court of New Jersey was entered on June 30, 1972. This Court has jurisdiction under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether the admission into evidence of portions of the statement made by petitioner before the County Prosecutor on March 19, 1970 constituted a violation of petitioner's Constitutional right against self-incrimination granted by the Fifth Amendment in that the statement was given under the coercive effect of the New Jersey forfeiture-of-office statute as interpreted by this Court in *Garrity* v. *New Jersey*.

2. Whether the admission into evidence of portions of the statement made by petitioner before the County Prosecutor on March 19, 1970 constituted a violation of petitioner's Fifth Amendment right against self-incrimination in that petitioner received none of the warnings required by *Miranda* v. *Arizona* prior to his being questioned.

3. Whether the unsupported references by the County Prosecutor at the trial to loan-sharking and other illegal activities going on at the Jade East Motel could not help but influence the jury, thereby denying petitioner of due process of law guaranteed by the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

Fourteenth Amendment

N.J.S. 2A:98–1

N.J.S. 2a:81–17.1 (Repealed May 15, 1970)

(Provisions of all of these are set out in full in the Appendix.)

STATEMENT OF THE CASE

On October 15, 1969, Vincent Sollazzo, petitioner's co-defendant in the trial below, filed with the New Jersey Division of Alcoholic Beverage Control an application to remove a disqualification from the right to possess a liquor license pursuant to N.J.S. 33:1–31.2. At a hearing held by the Alcoholic Beverage Control on January 7, 1970, petitioner appeared as one of three witnesses on behalf of Sollazzo, testifying under oath that he, petitioner, had been the police chief in South Hackensack, New Jersey for many years, that he had known Sollazzo for approximately ten years, and that during the past five years he had seen Sollazzo and talked with him approximately once a week. In addition, petitioner gave the following specific testimony:

Q. Do you know his reputation in the Community?
A. Yes.
Q. Have you, in the past five years, heard anyone speak of him in a derogatory manner?
A. No.
Q. In your opinion, is he now an honest, law-abiding person with a good reputation?
A. Yes.
Q. Do you feel that you had an ample opportunity to observe Mr. Sollazzo in order to make the statement you have made concerning his character?
A. Yes.

On March 19, 1970, a police captain from the Office of the County Prosecutor of Bergen County, New Jersey called petitioner and told him that the County Prosecutor wanted petitioner to appear in his office on that date. Upon his arrival, petitioner was informed that the County Prosecutor was desirous of questioning him in reference to an investigation of the South Hackensack police department and his knowledge of a search by the Gambling Squad of the Prosecutor's Office of the Jade East Motel in South Hackensack several months earlier.

At the trial below, a member of the Prosecutor's Gambling Squad testified that on December 19, 1969 his Squad had

entered the Jade East Motel pursuant to a search warrant which made no reference to Sollazzo. During the process of searching the Motel, the Gambling Squad notified the South Hackensack police department that the search was being conducted, resulting in the arrival of two members of the South Hackensack police force at the Motel to observe part of the investigation. After a thorough search, the Gambling Squad had found no illegal activity of any kind going on at the Motel and no arrests were made. A few articles which could possibly have been related to illegal activities were confiscated at the conclusion of the search. One of the South Hackensack police officers present during part of the search testified below that he had informed petitioner on the day of the search of what had happened at the Jade East Motel. On the same day, a police lieutenant of the Bergen County Prosecutor's Office called petitioner to tell him that when petitioner saw Sollazzo he should inform him that the Prosecutor wanted to talk to him. Petitioner was aware at this time that Sollazzo held some interest in the proprietorship of the Jade East.

At the County Prosecutor's Office on March 19, 1970, petitioner was escorted to the grand jury room, where the grand jury was not in session but where petitioner was confronted by the County Prosecutor, a deputy county prosecutor, the police captain who had called him earlier, a police detective, and a court recorder prepared to record the proceedings. Petitioner was asked to give sworn testimony, to which request he assented. At no time during the entire proceeding was petitioner warned that anything he said might later be used against him, nor was he told that he could seek the counsel of an attorney if he so desired.

A stenographic record was taken of petitioner's testimony in response to the questions put to him by those present in the grand jury room, at the conclusion of which petitioner was told he could review his testimony before signing the statement and could check his personal records concerning the specific events which had taken place several months earlier about which he had been unsure during the course of the questioning. After leaving the Prosecutor's Office, petitioner checked his records and then called the Prosecutor's Office to advise the Prosecutor of changes which petitioner had been told he could make in his

statement. These changes were never made in the statement despite testimony at the trial below by a member of the Prosecutor's staff that petitioner's proposed changes had been received by the Prosecutor's Office. The statement was never signed by petitioner and he never saw the statement again until after his indictment.

Soon after, petitioner was called by the County Prosecutor to appear before the grand jury, at which time petitioner appeared but was not called upon to testify or told the reason for his appearance. On March 24, 1970, five days after appearing before the County Prosecutor, petitioner and Sollazzo were indicted by the grand jury for conspiracy to obstruct and pervert justice under N.J.S. 2A:98–1. (see Appendix) The indictment charged that the overt act of the conspiracy was allegedly false testimony given willfully and knowingly by petitioner before the Alcoholic Beverage Control that Sollazzo had good reputation within the community in order to induce the Control to remove disqualification of Sollazzo from holding a liquor license. The beginning of the conspiracy was fixed at October 1, 1969 with its terminal date as January 7, 1970.

To this indictment the parties pleaded not guilty and the case was tried before the Bergen County Court. At the trial, portions of petitioner's unsigned statement made at the County Prosecutor's Office were admitted into evidence against petitioner over the objection of counsel. (The basis of these objections is explained in Point One and Point Two of the Argument. See Appendix for the opinion of the trial court on these objections.) Also during the trial, the County Prosecutor employed highly questionable tactics to influence the verdict of the jury. (These tactics are explained in Point Three of the Argument.) Both defendants were found guilty of the charge of conspiracy. Petitioner appealed to the Superior Court of New Jersey, Appellate Division, which sustained the conviction without giving any basis for its decision. (see Appendix.) The Supreme Court of New Jersey dismissed petitioner's appeal from the judgment of the Appellate Division, without opinion.

REASONS FOR GRANTING THE WRIT

POINT ONE: The admission into evidence of portions of the statement made by petitioner before the County Prosecutor on March 19, 1970 constituted a violation of petitioner's Constitutional right against self-incrimination granted by the Fifth Amendment in that the statement was given under the coercive effect of the New Jersey forfeiture-of-office statute as interpreted by this Court in Garrity v. New Jersey.

N.J.S. 2A:81–17.1, in effect at the time that petitioner appeared before the County Prosecutor, provided for the permanent forfeiture of office of any public official or employee who failed to testify under oath upon matters relating to the office, position or employment of such person before any body of the state having the right to inquire under oath upon such matters on the ground that the answer might tend to incriminate him. In *Garrity* v. *New Jersey*, 385 U.S. 493 (1966), this Court found this same forfeiture-of-office statute sufficient to have coerced or induced a group of police officers into foregoing a claim of the privilege against self-incrimination in statements made by them during an investigation by the state Attorney General into the alleged fixing of traffic tickets, rendering the resulting statements involuntary and therefore inadmissible in the state criminal proceedings. This Court has reaffirmed its position in *Garrity* in *Spevack* v. *Klein*, 385 U.S. 511 (1966), and later in *Uniform Sanitation Men Association, Inc.* v. *Commissioner of Sanitation*, 392 U.S. 280 (1968) and *Gardner* v. *Broderick*, 392 U.S. 273 (1968).

Clearly, N.J.S. 2A:81–17.1 was equally coercive in respect to the statement made by petitioner on March 19, 1970 as it was in *Garrity*. It cannot be argued that the New Jersey statute was not applicable in this case. Petitioner, as police chief of South Hackensack, was clearly a public employee. The County Prosecutor's Office is clearly "a body of this state which has the right to inquire under oath upon matters relating to the office, position or employment of such person". The statement by petitioner in this case was made under oath.

The only apparent distinction between the present case and *Garrity* is that in *Garrity* the police officers were each expressly warned before being questioned under oath that any refusal to

answer on the grounds of self-incrimination would make that individual subject to removal from office. No such express warning was given to petitioner in this case upon being told to appear or before being questioned under oath. Yet this distinction should not be deemed material here. Petitioner clearly need not have been expressly warned of the possible consequences of the forfeiture-of-office statute in order to feel its coercive effect. As one of the highest law enforcement officers in the county, petitioner was particularly aware of the requirements of the laws of the state of New Jersey. Moreover, in his position as chief of police and before that as a police officer, it cannot be doubted that petitioner had testified under oath on numerous occasions and under a variety of circumstances. It seems unlikely that petitioner was not strongly aware of the forfeiture statute, especially with the recent publicity over investigation of public officials and employees in New Jersey and the recent decision of the Supreme Court of the United States concerning this very statute in *Garrity*.

Moreover, the statute itself does not require that any person coming under the scope of its provisions must receive an express warning as to its consequences before the statute becomes effective, so that the statute could have been enforced in any case where a refusal to testify was made by a public employee even though no prior warning had been given. Thus, it was the statute itself which constituted coercion. Thus, it was the statute itself which constituted coercion, and an express warning would only serve to underline its coercive effect.

The trial court below rejected the argument that petitioner's statement should be excluded on the basis of the *Garrity* case because there was no evidence presented that indicated that petitioner had made the statement involuntarily. But as Justice Harlan goes to great lengths in his dissent in *Garrity* to point out, there was no evidence of involuntariness on the part of the police officers in that case either. Moreover, even if petitioner in this case had appeared and requested to give a statement voluntarily, which was not the situation here, the language of the statute provides that once he was sworn he then could not refuse to answer any question put to him concerning those subjects outlined in the statute without subjecting himself to forfeiture. Thus, in *Garrity*, the existence of N.J.S. 2A:81–17.1

was sufficiently coercive by itself to render the statements by the police officers inadmissible as a violation of the Fifth Amendment right against self-incrimination. The same conclusion is equally valid in the present case.

POINT TWO: The admission into evidence of portions of the statement made by petitioner before the County Prosecutor on March 19, 1970 constituted a violation of petitioner's Fifth Amendment right against self-incrimination in that petitioner received none of the warnings required by Miranda v. Arizona prior to his being questioned.

The trial court below overruled petitioner's objection to the admission of his statement based on *Miranda* v. *Arizona*, 384 U.S. 436 (1966), on the grounds that petitioner had not been entitled to the *Miranda* warnings because he was not "in custody" or the focus of the supposed investigation, but rather appeared and made his statement entirely voluntarily. The opinion of the trial court was based on an erroneous reading of *Miranda*.

This Court made it clear in *Miranda* that the warnings it was prescribing were intended to "assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself". In recognizing that "coercion can be mental as well as physical", this Court described in considerable detail the pressures inherent in "a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights". It is easy to draw parallels from *Miranda* to the present case. Clearly, the pressures of a "police-dominated atmosphere" about which this Court was so concerned in *Miranda* were present in this case. The County Prosecutor did not arrange to have petitioner questioned in the familiar confines of petitioner's office, where petitioner's records of the events on which he was interrogated would have been readily available for petitioner to refresh his memory and where petitioner would have felt at ease. Nor was the interrogation conducted in the more informal atmosphere of the Prosecutor's own office. Rather, petitioner was isolated in the oppressive atmosphere of the grand jury room to be interrogated by a battery of questioners made up of two prosecutors and two policemen

The real question in this case, then, is whether petitioner was sufficiently "in custody" to bring him under the scope of *Miranda*, the issue which the trial court below felt was decisive. *Miranda* defines the custodial interrogation which its warning requirements are intended to cover as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way". The opinion states that this definition explains the requirement in *Escobedo* v. *Illinois*, 378 U.S. 478 (1964), that the investigation be focused on the accused. *Miranda* v. *Arizona*, supra, 444.

This Court has indicated that for purposes of *Miranda* warnings, this definition of custodial interrogation should be liberally construed. It is clear that the individual being questioned need not even be under arrest for *Miranda* to apply. For example, in *Vignera* v. *New York*, one of the several cases decided by this Court in the *Miranda* decision, this Court excluded statements made by appellant prior to his arrest. Likewise, in *Orozco* v. *Texas*, 394 U.S. 324 (1969), statements were excluded by this Court which had been made by appellant in his own bedroom, not even in a police station or other interrogation room, and which were made prior to his actual arrest. Other courts have also followed this path of liberal construction of the "custody" requirement of *Miranda*, such as the Ninth Circuit in *United States* v. *Bekowies*, 432 F. 2d 8 (9th Cir. 1970), in which statements by appellant made in his own home while not under arrest were excluded because the *Miranda* requirements had not been complied with.

The trial court below explained that its decision that *Miranda* warnings were not necessary in this case was based on the fact that petitioner's statement was made "voluntarily". It has already been shown above that the New Jersey forfeiture-of-office statute made neither his appearance before the County Prosecutor nor his answers to all questions put to him entirely voluntary. And even discounting the effect of the New Jersey statute, the petitioner's being called to appear before the Prosecutor and then being called upon to answer questions under oath is clearly distinguishable from the description of the type of voluntary statement not requiring warnings given in *Miranda*, that is, where a person simply walks into a police

station and asks to make a confession. Nor is the situation in this case the same as "general on-the-scene questioning" by police also excepted by this Court in *Miranda*.

The trial court below also found that petitioner was not the focus of the investigation at the time of his sworn testimony on the basis of the County Prosecutor's claim that the entire South Hackensack police department was under investigation. Clearly, the Prosecutor was particularly interested in the specific activities of petitioner, as was reflected in the questions petitioner was asked, for example, concerning his testimony before the Alcoholic Beverage Control, and in the fact that petitioner alone of the entire police force was indicted only five days later on a charge having really nothing to do with his being a policeman. Law enforcement officials cannot get around the *Miranda* warnings simply by claiming later than the individual whom they were questioning was not the focus of their investigation.

One rather surprising and interesting question in this case is why four well-trained, careful law enforcement officers did not give petitioner the proper warnings before he gave his testimony simply to cover themselves and protect possible later use of the testimony. As this Court said in *Miranda*,

> The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. *Miranda* v. *Arizona*, supra, 468.

In the present case, giving the petitioner the warnings would have been so simple while his right to remain silent and to seek counsel were so important as his later indictment and conviction indicate. Indeed, in this particular case it does not seem outside the realm of possibility that the County Prosecutor, realizing that petitioner as a police officer was particularly aware of the circumstance surrounding the giving of the *Miranda* warnings, avoided the warnings in part to lull the petitioner into thinking that there would be no need for him to assert his constitutional privileges.

The County Prosecutor must have intended that if petitioner's statement proved incriminating he would possibly use it

against him at a later time. Yet despite petitioner's relatively cooperative attitude toward these law enforcement officials, of which he was one himself, the circumstances brought out in the testimony at the trial below clearly show that petitioner's answers to this interrogation could hardly be deemed a voluntary confession. Indeed, it was the police-dominated atmosphere, the isolation, the oppressive surroundings coupled with possible deception present in this case which exemplify the sophisticated police techniques described at length in *Miranda* and which the required warnings are intended to help protect the individual from. Yet the warnings will not be effective if law enforcement officials are able to find ways to avoid using them.

POINT THREE: The unsupported references by the County Prosecutor at the trial to loan-sharking and other illegal activities going on at the Jade East Motel could not help but influence the jury, thereby denying petitioner of due process of law guaranteed by the Fourteenth Amendment.

In prosecuting this case in the trial court below, the County Prosecutor seems to have been clearly aware that if it became apparent during the course of the trial that petitioner's co-defendant, Sollazzo, was obviously not of good character or good reputation within the community the jury would have to conclude that petitioner had testified falsely before the Alcoholic Beverage Control. To accomplish this end, the Prosecutor resorted to objectionable and seemingly unethical tactics to implant this totally unsubstantiated impression in the minds of the jurors, despite the repeated objections of counsel and admonitions by the court. Counsel for petitioner and for his co-defendant made timely objections and several requests for a mistrial on the grounds of these tactics by the Prosecutor. The denial of these requests for a mistrial was error on the part of the trial court below since the impression created by the prosecutor in the minds of the jurors was obviously critical to the outcome of this case.

For example, beginning in his opening statement, the Prosecutor stated that the evidence would show that petitioner knew that "Sollazzo's place of business, the Jade East, was a hideout for criminal suspects". Since no such allegation had been made

in the indictment or anywhere else, appropriate objection was made and the court was asked to declare a mistrial. (T 163-5) This request was refused but the jury was instructed to disregard the remark. The Prosecutor then referred to continual problems involving prostitution at the Jade East (T 169-1), another charge which had never been made previously and along with the earlier statement was never supported by the presentation of any evidence at any time in the trial.

At the conclusion of the state's case, the reference in the indictment to petitioner's knowledge of information having been obtained in the Motel search leading to charges of loan-sharking was deleted from the original indictment with the agreement of the Prosecutor because the state had not presented any evidence in its case to support the charge. (T2 136-1). Yet in the Prosecutor's cross examination of petitioner and again in his summation, the Prosecutor continued to make references to loan-sharking at the Motel and petitioner's knowledge thereof, despite objections by counsel and requests for a mistrial.

In its brief to the Appellate Division of the New Jersey Superior Court, the state based its argument on this issue on the ground that the references to criminal activities, prostitution, and loan-sharking at the Jade East Motel were not prejudicial in any way to petitioner but only might be considered prejudicial to Sollazzo, thereby giving no justification for reversal in the case of petitioner. This argument clearly falls short of the mark. Constant unsubstantiated references and suggestions to illegal activities would be prejudicial to Sollazzo by creating unjustified conception of Sollazzo's reputation and character. But from these insinuations of numerous and varied criminal activities on the part of Sollazzo comes the natural conclusion that petitioner, particularly as the top law enforcement officer in South Hackensack, must have been aware of or at least must have heard of these alleged activities so that his testimony before the Alcoholic Beverage Control as to Sollazzo's good reputation within the community was false.

At the trial below, the County Prosecutor presented no evidence suggestive of Sollazzo's reputation within the community other than a description of the search of the Motel, with no evidence of arrests or criminal charges stemming therefrom.

Thus, the insinuations and suggestions made by the Prosecutor, numerous and totally unsupported, were so serious and crucial because of their possible influence on the jury that the admonitions by the court to disregard such references could not ensure petitioner's right to due process of law in this case. Only a new trial for petitioner could bring about this result.

Respectfully submitted,

Donald Horowitz
Attorney for Petitioner
39 Hudson Street
Hackensack, New Jersey 07601

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENTMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

[redacted]

N.J.S. 2A:98–1. Conspiracy

Any 2 or more persons who conspire:

a. To commit a crime; or

b. Falsely and maliciously to indict another for a crime, or to procure another to be charged or arrested; or

c. Falsely to institute and maintain any suit; or

d. To cheat and defraud a person of any property by any means which are in themselves criminal; or

To cheat and defraud a person of any property by any means which, if executed, would amount to a cheat; or

f. To obtain money by false pretenses; or

g. To conceal or spread any contagious disease; or

h. To commit any act for the perversion or obstruction of justice or the due administration of the laws–

Are guilty of a conspiracy and each shall be punished, in the case of a conspiracy to commit a crime involving the possession, sale or use of narcotic drugs, as for a high misdemeanor and in all other cases, as for a misdemeanor.

N.J.S. 2A:81–17.1

Any person holding or who has held any elective or appointive public office, position or employment (whether state, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this state which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right of tenure or pension granted to him by any law of this state provided the inquiry relates to a matter which occurred or arose within the

preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this state.

INDICTMENT No. S-224-70
(Filed–March 24, 1970)

The Grand Jurors of the State of New Jersey, for the County of Bergen, upon their oaths present that Vincent Sollazzo and Angelo DeRosa some time during the period October 1, 1969 through January 7, 1970, in the County of Bergen aforesaid, and within the jurisdiction of this Court, did commit the crime of Conspiracy in that during said period of time they conspired to pervert and obstruct justice and the due administration of the Laws of the State of New Jersey, by unlawfully, willfully, knowingly and corruptly, designing, agreeing and planning to act in concert for the purpose of inducing the Director of the Division of Alcoholic Beverage Control of the State of New Jersey, to enter an Order removing the disqualification of Mr. Vincent Sollazzo from obtaining or holding an Alcoholic Beverage License because of a prior criminal conviction of said person.

In execution of the aforesaid conspiracy and to effect the object thereof, the following overt acts were committed:

(1) In October 16, 1969, Mr. Vincent Sollazzo filed an application with the Director of the Division of Alcoholic Beverage Control in which he requested the Director to enter an Order removing the disqualification, as a result of prior criminal convictions, from obtaining or holding a license pursuant to N.J.S. 33:1–31.2.

(2) At the request of Mr. Vincent Sollazzo, Mr. Angelo DeRosa did agree with Mr. Vincent Sollazzo to give testimony on behalf of Mr. Vincent Sollazzo at a hearing to be held before the Division of Alcoholic Beverage Control, which hearing was scheduled pursuant to N.J.S. 33:1–33.2.

(3) Mr. Angelo DeRosa is now and was at all times herein mentioned the Chief of Police of the Township of South Hackensack, Bergen County, New Jersey.

(4) The purpose of such hearing was to enable the Director of Division of Alcoholic Beverage Control to determine whether or not Mr. Vincent Sollazzo had conducted himself in a law abiding manner during the period from and since his last criminal conviction and whether or not his assocation with the alcoholic beverage industry would be contrary to the public interest and Mr. Vincent Sollazzo and Mr. Angelo DeRosa well knew the purpose of such hearing.

(5) The aforesaid hearing was scheduled before the Division of Alcoholic Beverage Control for January 7, 1970, and Mr. Vincent Sollazzo on such date did enter the Township of South Hackensack for the purpose of transporting Mr. Angelo DeRosa to such hearing at Newark, New Jersey, for the purpose of the giving of testimony by Mr. Angelo DeRosa on behalf of Mr. Vincent Sollazzo at such hearing.

(6) On the date of January 7, 1970, Mr. Angelo DeRosa did leave the Township of South Hackensack, in the same motor vehicle, pursuant to the aforesaid unlawful conspiracy and to expedite their common plan and purpose to present testimony by Mr. Angelo DeRosa on behalf of Mr. Vincent Sollazzo at such hearing.

(7) At approximately 2:30 p.m. on January 7, 1970, Mr. Vincent Sollazzo and Mr. Angelo DeRosa and others appeared before a hearing examiner in the Division of Alcoholic Beverage Control at Newark, New Jersey, and pursuant to the aforesaid unlawful conspiracy, Mr. Angelo DeRosa, in answer to questions propounded to him did state that:

(a) He was the Chief of Police in Hackensack;

(b) He had known Mr. Vincent Sollazzo for over ten (10) years and that during the past five (5) years he had seen Mr. Vincent Sollazzo in South Hackensack about once a week;

(c) That he, Angelo DeRosa, did know the reputation of Mr. Vincent Sollazzo in the community;

(d) That in the past five (5) years, he, Angelo DeRosa, had heard no one speak of Vincent Sollazzo in a derogatory manner;

(e) That he, Angelo DeRosa, had had ample opportunity to observe Mr. Vincent Sollazzo in order to make such statements concerning his character;

(f) And that in the opinion of Mr. Angelo DeRosa, Mr. Vincent Sollazzo was, at the time of such hearing, an honest, law abiding person with a good reputation.

(8) In fact, Mr. Angelo DeRosa well knew, at the time of such hearing, that Mr. Vincent Sollazzo did not have a good reputation in the community and that Mr. Vincent Sollazzo was in fact under investigation for alleged criminal activities by the Office of the Bergen County Prosecutor, and Mr. Angelo DeRosa well knew also that Mr. Vincent Sollazzo was not of good character and reputation. On or about December 19,

1969, the defendant was made aware through the Bergen County Prosecutor's Office that the said Vincent Sollazzo's premises were the subject of a raid by the Gambling Squad of the Bergen County Prosecutor's Office and that information leading to charges of loan sharking was obtained.

The foregoing are contrary to the provisions of N.J.S. 2A:98–1 and against the peace of this State, the Government and dignity of the same.

Guy W. Calissi,
County Prosecutor

A True Bill

Edward F. Kipfstuhl, Foreman

Judgment
(Filed – May 17, 1971)

County Court of Bergen County
Law Division

(Criminal)

(May 13, 1971)

Violation – N.J.S. 2A:98–1

The State of New Jersey,

vs.

Angelo DeRosa

Defendant.

Indictment for Conspiracy No. S-224-70
Term September 1969 Stated Session First
Filed: March 24, 1970
Arraigned: March 26, 1970
Plea: Not Guilty
Retracted: –
Trial: March 29, 30, 31, April 1, 2, 4, 5, 1971
Verdict: Guilty
Sentence: May 13, 1971

New Jersey State Prison Minimum 2 years Maximum 3 years. Sentence Suspended. Probation 3 years. Fine $1,000.00

Sentence Stayed Pending Appeal. Bail continued. Credit time 40 days, provided notice of appeal is filed within 45 days and the appeal is prosecuted diligently.

Reasons for Imposition of Sentence (Rule 3:7–10(b)):

Notwithstanding the seriousness of the offense, since this is a Chief of Police, in view of his more than 25 yrs. of service on

OPINION OF THE TRIAL COURT

THE COURT: I heard the arguments of counsel. I had some chance to think about it, unfortunately not as much as I would like to and not as much as someone should in a case of this kind but we have to do the best we can with the time allotted.

I have already held that under *Garrity* under the hearing before me, I find that the appearance was voluntary and not the result of any reliance by this defendant on the fact or fear by this defendant he would lose his job in the event he did not appear or come to the Prosecutor's Office to testify.

There is a further problem in this connection. I would rather not rest the decision on this but there is some question as to whether or not appearing before the Prosecutor for questioning is the kind of appearance that the statute involved in *Garrity* covers but as I say I would prefer not to rest the decision on that ground.

The second question is, whether the Miranda warnings were required. I find from the evidence before me that the defendant DeRosa appeared voluntarily before the Prosecutor's staff or whoever it was; the Grand Jury room was merely a place where he appeared; that he was then not in custody; that he was then not the focus or a focus of the investigation; that at best from the evidence the South Hackensack Police Department was under investigation and he may or may not have been one of those parties who is under investigation. He was not the focus or even a focus of the investigation. It could have been other members of the department, at best.

Under these circumstances I find that under the case of *State v. Williams*, 97 *N.J. Super.* at 598 which I decided in 1967 and which was later affirmed by the Appellate Division, petition for certification denied, and the case of *State v. Seefeldt*, 51 *N.J.* at 482, a 1968 case decided by our Supreme Court and under the case of *State v. Bode*, 108 *Super. App. Div.*, 1970, this defendant was not entitled to Miranda warnings by reason of his not being in custody and not being a focus of the investigation or target of the investigations.

I do not rest the decision upon the ground that he was a police officer because in *State v. Bode*, that did involve a police officer—that is 108 *Super.* 366—the police officer admitted to his certain incriminating statements and the Appellate Division

said the trial court determined that Miranda was not necessary in a case of the defendant because of his long experience as a police officer and his familiarity with the duty of the police to give the warnings to others.

Then the court went on to say, we prefer to rest our conclusion of admissibility upon the ground the defendant's statement was not made during a custodial interrogation required under Miranda, thus making Miranda inapplicable herein.

And the facts indicated the defendant was in police headquarters. He was on duty and made the statement to the Chief of Police at the time.

The court did indicate frankly—frankly the court has steered clear of the question as to whether a police officer needed the warnings by reason of his position and I also am skirting that question. My own feeling is in all probability—I just won't voice an opinion on it—I have an opinion but I don't think it is necessary for a decision in this case.

Under the circumstances I find the statement given by the Police Chief DeRosa to be voluntary, admissible, and the Miranda warnings need not have been given.

Per Curiam Opinion of the Superior Court of New Jersey, Appellate Division
(Filed–March 16, 1972.)

Argued February 28, 1972–Decided March 16, 1972.
Before Judges Collester, Mintz and Lynch.
On appeal from the Bergen County Court.

Miss Barbara A. Morris argued the cause for appellant *Vincent Sollazzo (Messrs. Brown, Vogelman, Morris & Ashley*, attorneys).

Mr. James A. Major argued the cause for appellant *Angelo DeRosa (Messrs. Major & Major*, attorneys).

Mr. Fred H. Kumpf argued the cause for respondent *(Mr. George F. Kugler, Jr.*, Attorney General of New Jersey, attorney).

PER CURIAM

Defendants appeal from their conviction of the crime of conspiracy in violation of N.J.S.A. 2A:98–1. The indictment charged that defendants conspired to obstruct justice by agreeing to act in concert for the purpose of inducing the Director of the Division of Alcoholic Beverage Control to enter an order removing the disqualification of Vincent Sollazzo from obtaining or holding an alcoholic beverage license because of a prior criminal conviction.

Defendant DeRosa contends: (1) the court erred in denying a motion for an acquittal at the close of the State's case, (2) it was error not to suppress a statement given by DeRosa to the county prosecutor on March 19, 1970, (3) the Division of Alcoholic Beverage Control was without jurisdiction to entertain Sollazzo's petition, (4) there was no proof that DeRosa did not express an honest opinion as to the reputation of Sollazzo at the hearing before the Division of Alcoholic Beverage Control, (5) the court erred by admitting in evidence the statement given by DeRosa on March 19, 1970, and (6) the conduct of the county prosecutor deprived DeRosa of a fair trial.

Defendant Sollazzo contends: (1) the court erred in denying a motion for acquittal at the close of the State's case, (2) the

admission of evidence prohibited by Evidence Rule 47 and of prejudicial and inflammatory testimony was reversible error, and (3) the aggregate of all errors denied Sollazzo a fair trial.

We have considered the points raised by defendants and conclude that they are lacking in merit.

Affirmed.

Filed: June 30, 1972

SUPREME COURT OF NEW JERSEY

M-382, September Term 1971

State of New Jersey,

Plaintiff-Respondent,

v

Angelo DeRosa,

Defendant-Appellant.

This matter having been duly presented to the Court, it is Ordered that the Motion to Dismiss Appeal is granted.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 30th day of June, 1972.

IRVING B. ZEICHNER
Acting Clerk

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THIS WRIT

I Petitioner's claim that his privilege against self-incrimination under Garrity v. New Jersey was violated does not present a substantial Federal question 4

II Petitioner's claim that he was entitled to Miranda warnings when he was not in custody does not present a substantial Federal question 6

III The comments of the prosecutor during petitioner's trial which were prejudicial to petitioner were forcefully stricken by the trial court and are ordinary evidentiary matters not involving a substantial Federal question 9

CONCLUSION 11

CASES CITED

Beal v. United States, 340 U.S. 852 (1950) 6
Bruton v. United States, 391 U.S. 123 (1968) 10
Community Services, Inc. v. United States,
342 U.S. 932 (1952) 6
Garrity v. New Jersey, 385 N.J. 493 (1966) 4,5,6
Mathis v. United States, 391 U.S. 1 (1968) 7
Miranda v. Arizona, 384 U.S. 436 (1966) 6,7,8
Orozco v. Texas, 394 U.S. 324 (1969) 7
Spevak v. Klein, 385 U.S. 511 (1966) 5
State v. Falco, 114 N.J. Super. 53, 55-56, 274
A.2d 828 (App. Div. 1971) 5
State v. Stillwell, 97 N.J. Super. 424, 425-427,
235 A.2d 229 (App. Div. 1967) 5
United States v. Abrams, 344 U.S. 855 (1952) 6
United States v. Johnston, 268 U.S. 220, 227 (1925) 11

NEW JERSEY STATUTES CITED

N.J.S.A. 2A:81–17.1 4,6
N.J.S.A. 2A:81–17.2a et seq. 6
N.J.S.A. 2A:98–1 2
N.J.S.A. 33:1–31.2 2

NEW JERSEY RULE OF EVIDENCE CITED

Rule 63(10) 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-513

ANGELO DE ROSA,

Petitioner,

v.

THE STATE OF NEW JERSEY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

QUESTIONS PRESENTED

1. Whether the admission of an admittedly voluntary sworn statement by a defendant violates his privilege against self-incrimination as interpreted in *Garrity v. New Jersey* because of the mere existence of a forfeiture-of-office statute.

2. Whether admission of an admittedly voluntary statement given by petitioner prior to receiving *Miranda* warnings when Petitioner was not in custody violated his Fifth Amendment right against self-incrimination.

3. Whether references by the prosecutor at trial to the various illegal activities of petitioner's co-defendant and certain evidential rulings by the trial court resulted in such prejudice to petitioner as to deny him due process of law under the Fourteenth Amendment.

STATEMENT OF THE CASE

Petitioner seeks a writ of certiorari to review a judgment entered in the New Jersey Superior Court, Appellate Division, on March 16, 1972, affirming petitioner's conviction by the Bergen County Court, Law Division, for conspiracy to obstruct justice and the due administration of the laws of New Jersey in violation of *N.J.S.A.* 2A:98–1. The unreported *per curiam* opinion of the Appellate Division is included in petitioner's appendix. On June 30, 1972, the New Jersey Supreme Court dismissed petitioner's appeal for failure to present a substantial constitutional question.

Petitioner's conviction arose out of testimony he gave before the New Jersey Division of Alcoholic Beverage Control in Newark, on January 7, 1970, in support of an application by one Vincent Sollazzo to remove a disqualification from the right to possess a liquor license pursuant to *N.J.S.A.* 33:1–31.2. Because of a 1947 bookmaking conviction in New York, the Division of Alcoholic Beverage Control required that Sollazzo present three witnesses to testify on his behalf to prove that he had conducted himself in a law-abiding manner for the last five years and that his association with the alcoholic beverage industry would not be contrary to the public interest.

At the hearing, petitioner De Rosa testified that he had been the police chief of South Hackensack, New Jersey, for 30 years, that he knew Sollazzo over ten years and that in the past five years he had seen Sollazzo on an average of once a week. In addition, he gave the following specific testimony:

> "Q. Do you know his reputation in the community?
>
> A. Yes
>
> Q. Have you in the past five years heard anyone speak of him in a derogatory manner?
>
> A. No.
>
> Q. In your opinion, is he an honest, law-abiding person with a good reputation?
>
> A. Yes.
>
> Q. Do you feel that you had an ample opportunity to observe Mr. Sollazzo in order to make the statement you have made concerning his character?
>
> A. Yes."

Sollazzo testified that he was a half partner in the Jade East Motel in South Hackensack, that he worked at the motel as a clerk and manager and that he had been fined $400 on a conviction for bookmaking in Manhattan, New York City, on July 19, 1947.

On March 19, 1970, petitioner was asked to come to the Office of the County Prosecutor of Bergen County, New Jersey. No subpoena had been issued requiring his attendance. Upon his arrival, De Rosa was told that the prosecutor was investigating the South Hackensack Police Department and the Jade East Motel. The prosecutor's office had some suspicion of corruption in the police department in South Hackensack. Petitioner was asked if he was willing to give a sworn statement. He indicated he was completely willing to give a sworn statement and proceeded to give the statement. After the statement was given, petitioner left the prosecutor's office. No attempts were made to place him in custody.

The trial court ruled there was absolutely no evidence that petitioner feared he would lose his job if he did not go to the prosecutor's office or give a statement. The court found that De Rosa appeared voluntarily at the courthouse, that he was not in custody and that he was willing to give a voluntary statement. In addition, the court found petitioner was not entitled to the *Miranda* warnings because he was not in custody and not the focus or target of the investigation. The court specifically stated it did not rest its decision on the fact that defendant was a police officer.

De Rosa's statement to the prosecutor indicated that on December 19, 1969, about three weeks prior to the Division of Alcoholic Beverage Control hearing, he learned that the Bergen County Prosecutor's Office had conducted a raid at the Jade East Motel in South Hackensack for suspected loansharking activities. De Rosa contacted the Bergen County Prosecutor's Office and was requested to have Sollazzo report to the prosecutor's office. On the afternoon of the raid, or within a few days after the raid, petitioner learned that Sollazzo was the subject of a continuing investigation by the prosecutor's office. About two weeks after the raid, petitioner learned that the investigation of the Jade East Motel involved loansharking. In the statement De Rosa also stated that he believed the raid at

Sollazzo's motel occurred after the hearing before the Division of Alcoholic Beverage Control, for he never would have testified on Sollazzo's behalf if he had known about the raid at the time.

Because petitioner and Sollazzo were tried jointly the trial court deleted the reference to loansharking in petitioner's statement to protect the co-defendant Sollazzo. The court however indicated that if De Rosa testified the whole statement could be introduced in evidence.

Petitioner did take the stand in his own defense at trial. He testified that he had been Chief of Police in South Hackensack for 23 years. He stated that he went to the prosecutor's office freely and willingly, that no promises or threats were made to cause him to give the statement and that he gave the statement voluntarily. He further testified that the statement presented in evidence was an accurate transcription of the statement he gave the prosecutor. Petitioner further testified that he was informed by telephone about the raid on the motel on the afternoon of the raid. He admitted being informed that the county prosecutor's office wanted to see Sollazzo concerning the raid.

Based on the above evidence the jury returned a verdict of guilty.

REASONS FOR DENYING THIS WRIT

I

Petitioner's claim that his privilege against self-incrimination under Garrity v. New Jersey was violated does not present a substantial federal question.

The facts in the present case clearly indicate there is no substantial federal constitutional question concerning the admissibility of defendant's statement. The heart of the decision in *Garrity v. New Jersey*, 385 *N.J.* 493 (1966), was that certain testimony given by police officers was involuntary because they were told they would lose their jobs under *N.J.S.A.* 2A:81–17.1 if they did not testify. Speaking for the court in *Garrity*, Justice Douglas stated:

> "We agree with the New Jersey Supreme Court that the forfeiture-of-office statute is relevant here only for the bearing it has on the voluntary character of the statements used to convict petitioners in their criminal prosecutions . . . The question is whether the

accused was deprived of his free choice to admit, to deny, or to refuse to answer." *Id.* at 496.

The determination, therefore, which must be made in every case is whether a public employee speaks involuntarily because of fear for the loss of his job. See *Garrity v. New Jersey, supra; Spevak v. Klein,* 385 *U.S.* 511 (1966); *State v. Falco,* 114 *N.J. Super.* 53, 55-56, 274 *A.*2d 828 (App. Div. 1971); *State v. Stillwell,* 97 *N.J. Super.* 424, 425-427, 235 *A.*2d 229 (App. Div. 1967).

The trial court below conducted a hearing on the voluntariness of petitioner's statement. The court indicated after the hearing that there was absolutely no evidence that petitioner feared he would lose his job if he did not give a statement to the representatives of the county prosecutor. The court found that De Rosa's appearance at the courthouse in Hackensack, where the statement was given, was at the request of the prosecutor's office but was not the result of fear he would lose his job if he did not appear. The court also found that the grand jury room was used as a matter of convenience, that petitioner was not in custody, that petitioner was permitted to leave after giving the statement, that petitioner was not the focus of the investigation of the South Hackensack Police Department and that petitioner's appearance and statement were voluntary.

The finding by the trial court that the statement was "voluntary" was later confirmed when petitioner De Rosa himself took the witness stand. De Rosa testified he went to the prosecutor's office "freely" and "willingly." He testified that no promises or threats of any kind were made to cause him to give the statement and that he gave the statement "voluntarily." This testimony flies in the face of petitioner's present claim that by virtue of his position as police chief he must have known of the forfeiture statute and that his statement was somehow a product of its coercive effect. Petitioner's present claim is merely an attempted recantation of his trial testimony to give the appearance of a constitutional argument in this petition for writ of certiorari. Petitioner cannot, however, recant his trial testimony which conclusively showed that petitioner's statement did not result from compulsion as in *Garrity v. New Jersey, supra.*

Petitioner also seems to argue that the very existence of

N.J.S.A. 2A:81–17.1 is coercive and renders his statement inadmissible. In support of this argument, petitioner cites, wholly out of context, isolated excerpts of Justice Harlan's dissenting opinion in *Garrity*. Petitioner ignores the fact that the majority opinion dealt squarely with petitioner's present contention and rejected it, finding the statute to be relevant only for the bearing it has on the issue of voluntariness. *Garrity v. New Jersey, supra*, at 496.

The trial court scrupulously followed the precepts of *Garrity* and found that petitioner's statement was not coerced by a fear of losing his job. This finding was supported by overwhelming evidence, including the testimony of petitioner himself. Petitioner has raised no issues which have not already been decided by the court in *Garrity*. In light of the findings by the trial court and his testimony at trial, it is difficult to comprehend how petitioner can seriously claim that there is a substantial constitutional question concerning the admissibility of his statement.

The statute attacked by petitioner, *N.J.S.A.* 2A:81–17.1, was repealed on May 15, 1970. A new statute relating to the duty of public employees to appear and testify was enacted which differs significantly from the statute in issue here. *N.J.S.A.* 2A:81–17.2a, *et seq.* The statute which replaces the one upon which the present controversy rests forbids the use of information compelled under the statute in a criminal proceeding against the person from whom it is compelled. *N.J.S.A.* 2A:81–17.2A2. Consequently, the issue raised by petitioner in the present case will not arise under the new statute. As a result, certiorari should be denied. See *e.g.*, *United States v. Abrams*, 344 *U.S.* 855 (1952); *Community Services, Inc. v. United States*, 342 *U.S.* 932 (1952); *Beal v. United States*, 340 *U.S.* 852 (1950).

II

Petitioner's claim that he was entitled to Miranda warnings when he was not in custody does not present a substantial federal question.

Petitioner contends that the trial court's action in admitting his statement into evidence was based on an erroneous reading of *Miranda v. Arizona*, 384 *U.S.* 436 (1966). A review

of the record will show that the trial court properly found petitioner was not entitled to the *Miranda* warnings prior to giving his statement.

The trial court found that petitioner was not in custody at the time he gave his statement and that he was not the focus or target of the investigation by the Bergen County Prosecutor's Office. Defendant testified at trial that at the request of the county prosecutor's office he came to the courthouse for a meeting with the county prosecutor "freely" and "willingly." He was not under arrest. After the statement was given he was free to leave, and in fact did leave the courthouse. The grand jury room was selected only as a matter of convenience; no subpoena had been issued to petitioner requiring his presence. There was no allegation of questioning in a threatening or overbearing manner. In the words of *Miranda*, petitioner was not "deprived of his freedom of action in any significant way." *Id.* at 444. Based on these facts the trial court properly found that petitioner was not in custody and properly admitted the statement in evidence despite the absence of the *Miranda* warnings.

This action by the trial court is fully supported both by the text of the *Miranda* decision and is not contrary to subsequent cases decided by the United States Supreme Court.

In *Miranda v. Arizona, supra*, the Court stated:

> "By custodial interrogation we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444.

The facts of the cases cited by petitioner are in striking contrast to the facts in the present case. In *Orozco v. Texas*, 394 *U.S.* 324 (1969), the court held that police interrogation of the accused in his own bedroom was in-custody interrogation. Central to this holding, however, was the fact that:

> "[F]rom the moment he gave his name . . . petitioner was not free to go where he pleased, but was 'under arrest,' " *Id.* at 325.

Similarly, in *Mathis v. United States*, 391 *U.S.* 1 (1968), defendant's interrogation by a federal revenue agent while he was in the state prison for an unrelated crime was held to be